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ANIPLEX, INCORPORATED

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ANIPLEX, INCORPORATED, a Japanese
corporation,

Plaintiff and Counter-Defendant,

v.

THE UPPER DECK COMPANY, a Nevada
corporation,

Defendant and Counter-Claimant.

CASE NO. 2:08-cv-00442-HDM-PAL

**DECLARATION OF ASA SUEHIRA-WEINTRAUB IN SUPPORT OF PLAINTIFF AND
COUNTER-DEFENDANT ANIPLEX, INCORPORATED'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

DECLARATION OF ASA SUEHIRA-WEINTRAUB

I, Asa Suehira-Weintraub, declare as follows:

1. I am a Vice-President in the International Licensing Department of Aniplex, Incorporated ("Aniplex"). I submit this declaration in support of Plaintiff and Counter-Defendant Aniplex, Incorporated's Motion for Partial Summary Judgment. I make this declaration of my own personal knowledge except where otherwise stated, and, if called upon to do so, I could and would testify competently to the matters set forth below.

2. Attached hereto as Exhibit 1 is a true and correct copy of an e-mail I sent to John Sepenuk, with copies to Jun Tanaka and Eiichi Kamagata, on or about April 4, 2006. It is Bates-stamped UD060171.

3. Attached hereto as Exhibit 2 is a true and correct copy of an e-mail thread, with attachments, between John Sepenuk and me. I sent the first message in the thread to Mr. Sepenuk on or about September 28, 2006. I received a response to that message from Mr. Sepenuk on or about September 28, 2006 (which I believe was his September 29, 2006, due to differences in time zones.) I responded to Mr. Sepenuk's message on or about that same day. On or about September 30, 2006, Mr. Sepenuk sent me another message attaching a spreadsheet called New Cash Flow Proposal.xls. I responded to that message on or about October 4, 2006 and attached both the spreadsheet Mr. Sepenuk sent to me (New Cash Flow Proposal.xls) and a Microsoft Word document Aniplex created called Upper Deck Amendment 10.4.06.doc. The e-mail thread and attachments comprising Exhibit 2 are Bates-labeled UD065216-065223.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I executed this declaration this 5th day of August, 2010 in Los Angeles, California.


Asa Suehira-Weintraub

CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5, I hereby certify that I am a member of Proskauer Rose LLP, and that I caused a true and correct copy of the foregoing

DECLARATION OF ASA SUEHIRA-WEINTRAUB IN SUPPORT OF PLAINTIFF AND COUNTER-DEFENDANT ANIPLEX, INCORPORATED'S MOTION FOR PARTIAL SUMMARY JUDGMENT to be served on the parties in this action through the Federal Court CM/ECF system.

DATED this 6th day of August, 2010

/s/ Joshua J. Pollack

An associate with Proskauer Rose LLP, *admitted pro hac vice*

EXHIBIT 1

EXHIBIT 1

From: asa.suehira@aniplex.jp
Sent: Tuesday, April 04, 2006 05:59 PM
To: Sepenuk, John
CC: jun.tanaka@aniplex.jp; eiichi.kamagata@aniplex.jp
Subject: RE: Kiba Contracts

Hi John,

Since the program has started airing in Japan we need you to start paying fees to us.
Especially advertising/sponsor fees costs. We need you to start paying production costs and licensing fee as well.

Mad-House needs to sign the join production asap. We cannot allow your lawyers running the clock on the joint production agreement again. (Please understand that the joint business agreement was not prepared by Aniplex)

We wil prepare a join business agreement in Japanese. If you cannot look at the agreement because it's in Japanese, we will have a joint business agreement with Aniplex, DR and Mad House. Aniplex will hold equity percentage on behalf of UD, and will assign appropriate percentage later on to UD. Mad House needs to sign the agreement in order to pay the production costs and continue producing the show.

If you don't want to handle it this way, please have UD Japan look over the contracts.
It is very basic agreement language. In anycase, we need you to cooperate with the contracts.

Regarding other licensing agreements, please read it before you hand it to your lawyers.
The agreements we have provided are very reasonable and rational.

Best regards,

Asa

EXHIBIT 2

EXHIBIT 2

From: asa.suehira@aniplex.jp
Sent: Wednesday, October 04, 2006 6:07 PM
To: Sepenuk, John
Subject: RE: Kiba Las Vegas
Attachments: Upper Deck Amendment 10.4.06.doc; New Cash Flow Proposal.xls

Dear John,

Attached is the draft of the amendment. I hope we can agree to this very fast.

Please note that since we are paying Japanese Yen for production costs and sponsorship fees, we will need them in JPY.

Also for the JV Production funding, we need UD to pay the fees by June, 2007. That is when we pay the studio and we need you to pay them asap if we are going to talk about additional episodes.

Please let me know if you have any questions.

Asa

(See attached file: Upper Deck Amendment 10.4.06.doc)

"Sepenuk, John" <John_Sepenuk@upperdecknv.com> 2006/09/30 01:53:44

宛先: Asa Suehira/ANX/SMJP@SMJP
cc:
件名: RE: Kiba Las Vegas

Attached is the spreadsheet representing our payment proposal to Aniplex for Kiba. The \$1.73 million that was previously scheduled as our TV/Video guarantee has been shifted to a marketing commitment for UD to use to help place the show globally (i.e. we offer CN \$1 million in ad revenue in exchange for TV placement.)

The Japan sponsorship agreement remains the same in terms of total and timing.

Merchandise MG payments begin quarterly in March of 2008.

JV Production funding is split with a \$200k good faith payment by end of October 2007, and 50% of the total by December, 25% in June of 2007 and the remaining 25% in December of 2007.

Royalties on Merchandise and TV will be paid quarterly on a rolling basis against the MG as per the current short form agreement terms and conditions.

John

-----Original Message-----

From: asa.suehira@aniplex.jp [mailto:asa.suehira@aniplex.jp]

Sent: Thursday, September 28, 2006 11:05 PM
To: Sepenuk, John
Subject: Re: Kiba Las Vegas

hmmm. I hope you guys don't change around the terms..
You just need to confirm the dates, and we will draft the rider.

Asa

"Sepenuk, John" <John_Sepenuk@upperdecknv.com> 2006/09/29 15:06:20

宛先: Asa Suehira/ANX/SMJP@SMJP
cc:
件名: Re: Kiba Las Vegas

Because our attorney was out. He is back tomorrow and will be drafting the proposal based on our discussion.

John

This email message and any attachments to it are intended only for the named recipients and may contain confidential information. If you are not one of the intended recipients, please do not duplicate or forward this e-mail message and immediately delete it from your computer.

From: asa.suehira@aniplex.jp <asa.suehira@aniplex.jp>
To: Sepenuk, John <John_Sepenuk@upperdecknv.com>
Sent: Thu Sep 28 19:59:49 2006
Subject: Kiba Las Vegas

What is going on?

Why is it taking couple days now?

Asa

(See attached file: New Cash Flow Proposal.xls)

	A	B	C	D	E	F	G	H	I	J
1	Kiba Investment Cash Flows									
2	000s									
3		Yen at Y115/\$								
4										
5	Agreements									
6			Total MG	Past						
7	Merchandising Agreement		\$ 2,020	\$ 3,000						
8	Joint Production Agreement		\$ 2,280							
9	TV Licensing Agreement									
10	Japanese Sponsorship Agreement		\$ 2,640							
11	Agreements Total:		\$ 6,940	\$ 3,000						
12	Running Total		\$	\$ 3,000						
13										
14										
15										
16	Merchandising Agreement									
17	Joint Production Agreement									
18	TV Licensing Agreement									
19	Japanese Sponsorship Agreement									
20	Agreements Total:									
21	Running Total									
22										
23										
24										
25	Merchandising Agreement									
26	Joint Production Agreement									
27	TV Licensing Agreement									
28	Japanese Sponsorship Agreement									
29	Agreements Total:									
30	Running Total									

	K	L	M	N	O	P	Q	R	S	T	U	V
1												
2												
3												
4												
5			2006									
6			Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct
7												\$ 200
8												
9												
10						\$ 220	\$ 220	\$ 220	\$ 220	\$ 220	\$ 220	\$ 220
11			\$ -	\$ -	\$ -	\$ 220	\$ 220	\$ 220	\$ 220	\$ 220	\$ 220	\$ 420
12			\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,220	\$ 3,440	\$ 3,660	\$ 3,880	\$ 4,100	\$ 4,320	\$ 4,740
13												
14			2007									
15			Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct
16								\$ 570				
17												
18												
19			\$ 220	\$ 220	\$ 220							
20			\$ 220	\$ 220	\$ 220	\$ -	\$ -	\$ 570	\$ -	\$ -	\$ -	\$ -
21			\$ 6,340	\$ 6,560	\$ 6,780	\$ 6,780	\$ 6,780	\$ 7,350	\$ 7,350	\$ 7,350	\$ 7,350	\$ 7,350
22												
23			2008									
24			Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct
25					\$ 505			\$ 505			\$ 505	
26												
27												
28												
29			\$ -	\$ -	\$ 505	\$ -	\$ -	\$ 505	\$ -	\$ -	\$ 505	\$ -
30			\$ 7,920	\$ 7,920	\$ 8,425	\$ 8,425	\$ 8,425	\$ 8,930	\$ 8,930	\$ 8,930	\$ 9,435	\$ 9,435

	W	X	Y	Z	AA	AB
1						
2						
3						
4						
5						
6	Nov	Dec	Total			
7			\$ 3,000			
8		\$ 940	\$ 1,140			
9			\$ -			
10	\$ 220	\$ 220	\$ 1,980			
11	\$ 220	\$ 1,160	\$ 6,120			
12	\$ 4,960	\$ 6,120				
13						
14						
15	Nov	Dec				
16			\$ -			
17		\$ 570	\$ 1,140			
18			\$ -			
19			\$ 660			
20	\$ -	\$ 570	\$ 1,800			
21	\$ 7,350	\$ 7,920				
22						
23						
24	Nov	Dec			Total	
25		\$ 505	\$ 2,020		\$ 6,000	
26			\$ -		\$ 2,280	
27			\$ -		\$ -	
28			\$ -		\$ 3,960	
29	\$ -	\$ 505	\$ 2,020		\$ 12,240	
30	\$ 9,435	\$ 9,940	\$ 9,940		\$ 7,920	

AMENDMENT

This AMENDMENT ("Amendment") is entered into as of October 8th, 2006, by and between Aniplex Inc. (hereinafter "ANX") and The Upper Deck Company (hereinafter "UD"), and amends the "KIBA" SHORT FORM AGREEMENT dated as of December 10, 2005, between ANX and UD as amended through the date hereof ("Original Agreement"). ANX and UD hereby agree as follows:

1. The Original Agreement as amended by this Amendment may be referred to herein as the "Agreement". Capitalized terms used and not defined herein have the meanings ascribed to them in the Original Agreement.
2. The Original Agreement shall be amended as follows:
 - A. The paragraph entitled the "Payment Schedule" in the Agreement section Joint Venture Agreement, shall be deleted in its entirety and substituting therefore the following:

Investment Amount shall be divided into three tranches with each tranche paid as follows

 - Twenty Three Million JP Yen (¥23,000,000) to be paid on October 31, 2006;
 - One Hundred Eight Million Two Hundred Fifty Thousand JP Yen (¥108,250,000) to be paid on December 31, 2006;
 - One Hundred Thirty One Million Two Hundred Fifty Thousand JP Yen (¥131,250,000) to be paid on June 30, 2007.
 - B. The paragraph entitled the "Merchandising Minimum Guarantee" in the Agreement section Merchandising Agreement, shall be deleted in its entirety and substituting therefore the following:
 - Five Hundred Five Thousand US Dollars (US\$505,000) to be paid on March 31, 2008;
 - Five Hundred Five Thousand US Dollars (US\$505,000) to be paid on June 30, 2008;
 - Five Hundred Five Thousand US Dollars (US\$505,000) to be paid on September 30, 2008;
 - Five Hundred Five Thousand US Dollars (US\$505,000) to be paid on December 31, 2008.
 - C. The paragraph entitled the "Sponsorship Amount" in the Agreement section Japanese Sponsorship Agreement, shall be deleted in its entirety and substituting therefore the following:

Three Hundred Million Japanese Yen (¥300,000,000) to be paid to ANX.

D. The paragraph entitled "Escrow Schedule" in the Agreement section entitled Japanese Sponsorship Agreement shall be deleted in its entirety and substituting therefore the following:

Payment Schedule

- One Hundred Seventy Five Million Japanese Yen (¥175,000,000) to be paid on October 31st, 2006;
- Twenty Five Million Japanese Yen (¥25,000,000) to be paid on November 30th, 2006;
- Twenty Five Million Japanese Yen (¥25,000,000) to be paid on December 31st, 2006;
- Twenty Five Million Japanese Yen (¥25,000,000) to be paid on January 31st, 2007;
- Twenty Five Million Japanese Yen (¥25,000,000) to be paid on February 28th, 2007;
- Twenty Five Million Japanese Yen (¥25,000,000) to be paid on March 31st, 2007.

All amounts payable by UD under this Amendment shall be paid free and clear of and without any deduction on account of any taxes or withholding taxes imposed by governments.

3. Notwithstanding the Original Agreement, ANX and UD agree that the TV Minimum Guarantee (US\$1,730,000) contemplated by the TV and Video License Agreement section of the Agreement shall not be paid to ANX but rather shall be used by UD as a "marketing fund" to assist UD to placed the Program on major broadcasters in the Territory (hereinafter "Marketing Fund"). The Marketing Fund shall be only be used for helping the Television placement of the Program. The Marketing Fund spend shall be actual and documented, and UD shall refund to ANX the remaining balance of the Marketing Fund that was not spent by December 2008.

3. Except as specifically amended by this Agreement, the Original Agreement shall remain in full force and effect in accordance with its terms. Section or other headings contained in this Amendment are for reference purposed only and shall not affect in any way the meaning or interpretation of this Amendment; and, no provision of this Amendment shall be interpreted for or against any party because that party or its legal representative drafted the provision.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed as of the day and year first set forth above.

ANIPILEX INC.

THE UPPER DECK COMPANY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____